

## BOUNDARY WATERS: BANCOS IN RIO GRANDE

*Convention signed at Washington March 20, 1905; protocol of signature done at México November 14, 1905*

*Senate advice and consent to ratification February 28, 1907*

*Ratified by the President of the United States March 13, 1907*

*Ratified by Mexico March 15, 1907*

*Ratifications exchanged at Washington May 31, 1907*

*Entered into force May 31, 1907*

*Proclaimed by the President of the United States June 5, 1907*

35 Stat. 1863; Treaty Series 461

Whereas, for the purpose of obviating the difficulties arising from the application of Article V of the Treaty of Guadalupe-Hidalgo, dated February 2, 1848,<sup>1</sup> and Article I of the Treaty of December 30, 1853,<sup>2</sup> both concluded between the United States of America and Mexico—difficulties growing out of the frequent changes to which the beds of the Rio Grande and Colorado River are subject—there was signed in Washington on November 12, 1884,<sup>3</sup> by the Plenipotentiaries of the United States and Mexico, a convention containing the following stipulations:

“ARTICLE I. The dividing line shall forever be that described in the aforesaid Treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

“ARTICLE II. Any other change, wrought by the force of the current whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid Treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commission in 1852, but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.”

<sup>1</sup> TS 207, *ante*, p. 791.

<sup>2</sup> TS 208, *ante*, p. 812.

<sup>3</sup> TS 226, *ante*, p. 865.

Whereas, as a result of the topographical labors of the Boundary Commission created by the Convention of March 1, 1889,<sup>4</sup> it has been observed that there is a typical class of changes effected in the bed of the Rio Grande, in which, owing to slow and gradual erosion, coupled with avulsion, said river abandons its old channel and there are separated from it small portions of land known as "bancos" bounded by the said old bed, and which, according to the terms of Article II of the aforementioned Convention of 1884, remain subject to the dominion and jurisdiction of the country from which they have been separated;

Whereas, said "bancos" are left at a distance from the new river bed, and, by reason of the successive deposits of alluvium, the old channel is becoming effaced, the land of said "bancos" becomes confused with the land of the "bancos" contiguous thereto, thus giving rise to difficulties and controversies, some of an international and others of a private character;

Whereas, the labors of the International Boundary Commission, undertaken with the object of fixing the boundary line with reference to the "bancos," have demonstrated that the application to these "bancos" of the principle established in Article II of the Convention of 1884 renders difficult the solution of the controversies mentioned, and, instead of simplifying, complicates the said boundary line between the two countries:

Therefore, the Governments of the United States of America and the United States of Mexico, being desirous to enter into a convention to establish more fitting rules for the solution of such difficulties, have appointed as their Plenipotentiaries—

That of the United States of America, Alvey A. Adey, Acting Secretary of State of the United States;

That of the United States of Mexico, its Ambassador Extraordinary and Plenipotentiary, Licenciado Don Manuel de Azpíroz;

Who, after exhibiting their full powers, found to be in good and due form, have agreed to the following articles:

#### ARTICLE I

The fifty-eight (58) bancos surveyed and described in the report of the consulting engineers, dated May 30, 1898, to which reference is made in the record of proceedings of the International Boundary Commission, dated June 14, 1898, and which are drawn on fifty-four (54) maps on a scale of one to five thousand (1 to 5,000), and three index maps, signed by the Commissioners and by the Plenipotentiaries appointed by the convention,<sup>5</sup> are

<sup>4</sup> TS 232, *ante*, p. 877.

<sup>5</sup> See protocol of signature, p. 923.

hereby eliminated from the effects of Article II of the Treaty of November 12, 1884.

Within the part of the Rio Grande comprised between its mouth and its confluence with the San Juan River the boundary line between the two countries shall be the broken red line shown on the said maps—that is, it shall follow the deepest channel of the stream—and the dominion and jurisdiction of so many of the aforesaid fifty-eight (58) bancos as may remain on the right bank of the river shall pass to Mexico, and the dominion and jurisdiction of those of the said fifty-eight (58) bancos which may remain on the left bank shall pass to the United States of America.

#### ARTICLE II

The International Commission shall, in the future, be guided by the principle of elimination of the bancos established in the foregoing article, with regard to the labors concerning the boundary line throughout the part of the Rio Grande and the Colorado River which serves as a boundary between the two nations. There are hereby excepted from this provision the portions of land segregated by the change in the bed of the said rivers having an area of over two hundred and fifty (250) hectares, or a population of over two hundred (200) souls, and which shall not be considered as bancos for the purposes of this treaty and shall not be eliminated, the old bed of the river remaining, therefore, the boundary in such cases.

#### ARTICLE III

With regard to the bancos which may be formed in future, as well as to those already formed but which are not yet surveyed, the Boundary Commission shall proceed to the places where they have been formed, for the purpose of duly applying Articles I and II of the present convention, and the proper maps shall be prepared in which the changes that have occurred shall be shown, in a manner similar to that employed in the preparation of the maps of the aforementioned fifty-eight (58) bancos.

As regards these bancos, as well as those already formed but not surveyed, and those that may be formed in future, the Commission shall mark on the ground, with suitable monuments, the bed abandoned by the river, so that the boundaries of the bancos shall be clearly defined.

On all separated land on which the successive alluvium deposits have caused to disappear those parts of the abandoned channel which are adjacent to the river, each of the extremities of said channel shall be united by means of a straight line to the nearest part of the bank of the same river.

#### ARTICLE IV

The citizens of either of the two contracting countries who, by virtue of the stipulations of this convention, shall in future be located on the land of the

other may remain thereon or remove at any time to whatever place may suit them, and either keep the property which they possess in said territory or dispose of it. Those who prefer to remain on the eliminated bancos may either preserve the title and rights of citizenship of the country to which the said bancos formerly belonged, or acquire the nationality of the country to which they will belong in the future.

Property of all kinds situated on the said bancos shall be inviolably respected, and its present owners, their heirs, and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated.

#### ARTICLE V

This convention shall be ratified by the two high contracting parties in accordance with their respective Constitutions, and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, we, the undersigned, by virtue of our respective powers, have signed the present convention, both in the English and Spanish languages, and have thereunto affixed our seals.

Done in duplicate, at the City of Washington, this 20th day of March, one thousand nine hundred and five.

ALVEY A. ADEE [SEAL]

M. DE AZPÍROZ [SEAL]

#### PROTOCOL OF SIGNATURE

The Plenipotentiaries of the United States and Mexico who, on March 20, 1905, signed the treaty for the elimination of bancos in the Rio Grande, having omitted involuntarily to sign the maps mentioned in Article I thereof and which form a part of the said instrument, the undersigned Plenipotentiaries have met together this day and signed the above mentioned maps in conformity with the authority conferred upon them by their respective Governments.

IN WITNESS WHEREOF they have signed the present Protocol of Signature and have affixed their seals thereto.

DONE at Washington this fourteenth day of November one thousand nine hundred and five.

ALVEY A. ADEE [SEAL]

JOSÉ F. GODOY [SEAL]